

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS**

04 JUL -8 11:13 AM
REGIONAL HEARING OFFICE
EPA REGION VI

IN THE MATTER OF:

FAIRCHILD DORNIER CORPORATION,
SAN ANTONIO, TEXAS

RESPONDENT

§
§
§
§
§
§
§

DOCKET NO. RCRA-06-2003-0901
EPA I.D. NO. TXD039045968

CONSENT AGREEMENT
AND FINAL ORDER

I.

PRELIMINARY STATEMENT

1. This proceeding for the assessment of a penalty and a compliance order was instituted by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928, on June 18, 2003, by the filing of a Complaint, Compliance Order, and Notice of Opportunity for Hearing ("Complaint"). The Complaint charged the Respondent, Fairchild Dornier Corporation, with violating RCRA and the regulations promulgated pursuant to RCRA.

2. The Respondent admits the jurisdictional allegations of the Complaint; however, the Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in the Complaint or the Findings of Fact and Conclusions of Law contained in this Consent Agreement and Final Order ("CAFO"). The Complaint states a claim upon which relief may be granted.

3. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO, and waives all defenses which have been raised or could have been raised to the claims set forth in the Complaint.

4. This CAFO resolves those violations which were alleged in the Complaint.
5. The Respondent consents to the issuance of the CAFO hereinafter recited and agrees to comply with the provisions of the RCRA Compliance Order Section contained herein.

II.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. Fairchild Dornier Corporation ("Respondent") is a corporation incorporated under the laws of the State of Delaware and qualified to conduct business in the State of Texas.
7. Respondent is a corporation, and therefore is a "person" as defined in Texas Health and Safety Code § 361.003(26) (Vernon 1993), 30 Texas Administrative Code ("TEX. ADMIN. CODE") § 335.1, Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 Code of Federal Regulation ("C.F.R.") § 260.10.
8. Respondent's registered agent for service is James E. Walsh III, 10823 N.E. Entrance Road, San Antonio, Texas 78216-6001.
9. Respondent owned and operated an aircraft parts and wings manufacturing, metal finishing, assembly, and maintenance complex located at 10823 N.E. Entrance Road, San Antonio, Bexar County, Texas ("the Facility").
10. Respondent's complex was a "facility" as that term is defined at 30 TEX. ADMIN. CODE § 335.1 [40 C.F.R. § 260.10].
11. Respondent specialized in the manufacture and construction of aircraft parts and wings for commuter aircraft.
12. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, on or about October 15, 1984, Respondent provided a Notification of Registration ("NOR") for Hazardous Waste Activity

(RCRA Section 3010 Notification) to the Texas Commission on Environmental Quality ("TCEQ") with respect to the Facility.

13. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, on or about January 9, 1996, Respondent provided an amended NOR for Hazardous Waste Activity (RCRA Section 3010 Notification) to the TCEQ with respect to the Facility.

14. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, on or about April 9, 2001, Respondent provided a NOR for Hazardous Waste Activity (RCRA Section 3010 Notification) to the EPA with respect to the Facility.

15. In the RCRA Section 3010 Notification, Respondent identified itself as a Large Quantity Generator of hazardous wastes, including generation of the following hazardous wastes (EPA hazardous waste codes): D001, D005, D006, D007, D008, D010, D035, F001, F002, F003, F005, and F007.

16. Respondent's hazardous waste activity records indicate that Respondent routinely generated over 3,000 pounds of various hazardous waste per month, including paints, strippers, sealants, solvents, contaminated fuels, and wastewater treatment sludge, thereby qualifying Respondent as a large quantity generator of hazardous waste.

17. Respondent was a "generator" of hazardous waste, as that term is defined in 30 TEX. ADMIN. CODE § 335.1 [40 C.F.R. § 260.10].

18. In the RCRA Section 3010 Notification, Respondent identified itself as a hazardous waste treatment and storage facility.

19. The Respondent informed EPA that Respondent officially ceased operations and began closure activities at the Facility on or about April 1, 2002. The Respondent

discontinued manufacturing, metal finishing, painting, parts construction and assembly activities at the Facility on or about April 1, 2002. Minor aircraft maintenance operations upon existing aircraft continued to be performed by Respondent at the Facility during 2002. Facility records indicate that shipments of hazardous waste to off-site disposal facilities continued through November of 2002.

20. Respondent, Fairchild Dornier Corporation, filed for bankruptcy relief under Chapter 11, U.S. Code (Bankruptcy Case No. 02-82004-SSM) in the Eastern District of Virginia, whereby the petition was filed on April 24, 2002.

21. Pursuant to RCRA Section 3007, 42 U.S.C. § 6927, EPA conducted a Compliance Evaluation Inspection on April 9 & 10, 2001 ("Inspection") at the Facility to determine compliance with RCRA regulations.

22. During the Inspection, EPA representatives documented the following observations and alleged associated violations of RCRA and the regulations promulgated thereunder:

I. Central Waste Consolidation Area:

- a. Two open hazardous waste containers of paint waste liquids and one open hazardous waste container of paint waste solids (i.e. used paint filters) located in the central waste consolidation area;
- b. One hazardous waste accumulation container of paint waste liquids located in the central waste consolidation area which was not labeled or marked as "hazardous waste" or identified according to the contents of the container;
- c. Used paint filters, identified as paint waste solids, dispersed throughout the central waste consolidation area which were not being properly stored inside of hazardous waste containers;
- d. One container of paint waste liquids and one container of paint waste solids which were stored in the central waste consolidation area in excess of the

90-day storage limit;

- e. Inspection records for the central waste consolidation area were not maintained or provided for the time period prior to March 2001; and
- f. The Facility's emergency response & preparedness contingency plan had not been updated since March 1996, and notification of the Facility's emergency response & preparedness contingency plan had not been provided to local authorities.

II. Hazardous Waste Container Storage Building:

- a. One hazardous waste container of paint waste liquids located in the Facility's hazardous waste container storage building which had not been properly labeled or dated as required.

III. Hanger No. 11:

- a. Several open satellite accumulation containers of paint waste solids (i.e. contaminated cloths, rags, wipes, and papers) located in Hanger No. 11.

23. Each of the substances identified in paragraph 22 above is a "solid waste" as defined at 30 TEX. ADMIN. CODE § 335.1 [40 C.F.R. § 261.2].

24. Pursuant to 40 C.F.R. § 261.3(a)(2)(iv), a solid waste is a hazardous waste if it is a mixture of a solid waste and one or more hazardous wastes listed in subpart D of this part and has not been excluded under 40 C.F.R. §§ 260.20 and 260.22. Thus, the substances identified in paragraph 22 above are hazardous wastes.

25. Each of the substances identified in paragraph 22 above is a "hazardous waste" as defined at 30 TEX. ADMIN. CODE § 335.1 [40 C.F.R. § 261.3].

26. Each of the substances identified in paragraph 22 above is also an "industrial hazardous waste" as defined at 30 TEX. ADMIN. CODE § 335.1. For the purposes of this CAFO, the term "hazardous waste" shall mean "hazardous waste" and "industrial hazardous waste."

III.

RCRA VIOLATIONS ALLEGED

COUNT I - CENTRAL WASTE CONSOLIDATION AREA:

OPERATING A HAZARDOUS WASTE STORAGE FACILITY WITHOUT INTERIM STATUS OR PERMIT IN VIOLATION OF 40 C.F.R. §§ 270.1 AND 270.10, AND RCRA SECTION 3005(a), BY FAILING TO MEET THE EXEMPTION REQUIREMENTS OF 30 TEX. ADMIN. CODE § 335.69 [40 C.F.R. 262.34]

27. Pursuant to 30 TEX. ADMIN. CODE § 335.69(b) [40 C.F.R. § 262.34(b)], a generator who accumulates hazardous waste on-site for more than ninety (90) days is an operator of a hazardous waste storage facility and is subject to the requirements of 40 C.F.R. parts 264 and 265 and the permit requirements of 40 C.F.R. part 270, unless the generator has been granted an extension to the 90-day period.

28. During the Inspection, EPA representatives observed and documented one container of paint waste liquids dated December 30, 2000 and one container of paint waste solids dated December 10, 2000 being stored in the Facility's central waste consolidation area in excess of the permitted 90-day storage limit.

29. Pursuant to 30 TEX. ADMIN. CODE § 335.69(a)(1)(A) [40 C.F.R. § 262.34(a)(1)(i)], when hazardous waste is placed in containers, the generator must comply with the requirements for containers, as set forth in 30 TEX. ADMIN. CODE § 335.112(a)(8) [Subpart I of 40 C.F.R. Part 265 (40 C.F.R. § 265.173)]:

- a. A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
- b. A container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause leakage.

30. During the Inspection, EPA representatives observed and documented two open hazardous waste containers of paint waste liquids and one open hazardous waste container of paint waste solids (i.e. used paint filters) located in the central waste consolidation area.

31. Respondent's NOR listed paint waste liquids generated as having the following EPA hazardous waste codes (as defined at 40 C.F.R. §§ 261.24-261.31): D001 - ignitable liquids, D006 - cadmium, D007 - chromium, D008 - lead, D010 - selenium, D035 - methyl ethyl ketone, F003 - spent non-halogenated solvents such as xylene, acetone, ethyl acetate, ethyl, and benzene, and F005 - spent solvents and spent solvents mixtures.

32. Pursuant to 30 TEX. ADMIN. CODE § 335.69(d)(2) [40 C.F.R. § 262.34(c)(1)(ii)], while being accumulated on-site, each container must be labeled or marked clearly with the words "Hazardous Waste" or with other words that identify the contents of the container.

33. During the Inspection, EPA representatives observed and documented one hazardous waste accumulation container of paint waste liquids located in the central waste consolidation area which was not labeled or marked with the words "hazardous waste" or identified according to the contents of the container. The container was approximately half-full with paint waste liquids at the time of the Inspection.

34. Pursuant to 30 TEX. ADMIN. CODE § 335.69(a)(2) [40 C.F.R. § 262.34(a)(2)], while being accumulated on-site, the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container.

35. During the Inspection, EPA representatives observed and documented several used paint filters, identified as paint waste solids, dispersed throughout the central waste consolidation area which were not being stored inside of proper hazardous waste containers that were clearly

marked and dated for inspection.

36. Pursuant to 30 TEX. ADMIN. CODE § 335.112(a)(8) [40 C.F.R. § 265.174], the owner or operator of a hazardous waste storage facility must inspect areas where containers are stored, at least weekly, checking for leaks and deterioration caused by corrosion or other factors.

37. During the Inspection, EPA representatives documented that Respondent had failed to inspect and maintain associated inspection reports for the central waste consolidation area prior to March 19, 2001.

38. Pursuant to 30 TEX. ADMIN. CODE § 335.69(a)(4) [40 C.F.R. § 262.34(a)(4)], a generator must maintain a copy of the Facility's emergency response contingency plan on-site and submit copies to each of the local police department, fire department, hospitals, and State and local emergency response teams which may be called upon to provide emergency service.

39. During the Inspection, EPA representatives documented that Respondent had failed to update the Facility's emergency response contingency plan since March 1996, and had failed to provide a copy to the local police department, fire department, hospitals, and State and local emergency response teams that may be called upon to provide emergency service, in accordance with 40 C.F.R. § 265.53.

40. Therefore, Respondent failed to meet the exemption requirements of 40 C.F.R. § 262.34, and stored hazardous waste in the Facility's central waste consolidation area without a permit or interim status in violation of 40 C.F.R. §§ 270.1 and 270.10, RCRA Section 3005(a), and 30 TEX. ADMIN. CODE §§ 335.69 and 335.112.

COUNT II - HAZARDOUS WASTE CONTAINER STORAGE BUILDING:

OPERATING A HAZARDOUS WASTE STORAGE FACILITY WITHOUT INTERIM STATUS OR PERMIT IN VIOLATION OF 40 C.F.R. §§ 270.1 AND 270.10, AND RCRA SECTION 3005(a), BY FAILING TO MEET THE EXEMPTION REQUIREMENTS OF 30

TEX. ADMIN. CODE § 335.69 [40 C.F.R. 262.34]

41. Pursuant to 30 TEX. ADMIN. CODE § 335.69(a)(2) [40 C.F.R. § 262.34(a)(2)], while being accumulated on-site, the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container.

42. During the Inspection, EPA representatives observed and documented one hazardous waste container of paint waste liquids located in the Facility's hazardous waste container storage building which had not been properly marked and dated for inspection as required.

43. Therefore, Respondent failed to meet the exemption requirements of 40 C.F.R. § 262.34, and stored hazardous waste in the Facility's hazardous waste container storage building without a permit or interim status, in violation of 40 C.F.R. §§ 270.1 and 270.10, RCRA Section 3005(a), and 30 TEX. ADMIN. CODE §§ 335.69.

COUNT III - HANGER NO. 11:

OPERATING A HAZARDOUS WASTE STORAGE FACILITY WITHOUT INTERIM STATUS OR PERMIT IN VIOLATION OF 40 C.F.R. §§ 270.1 AND 270.10, AND RCRA SECTION 3005(a), BY FAILING TO MEET THE EXEMPTION REQUIREMENTS OF 30 TEX. ADMIN. CODE § 335.69 [40 C.F.R. 262.34]

44. Pursuant to 30 TEX. ADMIN. CODE § 335.69(a)(1)(A) [40 C.F.R. § 262.34(a)(1)(i)], when hazardous waste is placed in containers, the generator must keep all containers closed during storage, except when it is necessary to add or remove waste, in accordance with the requirements for containers, as set forth in 30 TEX. ADMIN. CODE § 335.112(a)(8) [Subpart I of 40 C.F.R. Part 265 (40 C.F.R. § 265.173)].

45. During the Inspection, EPA representatives observed and documented several open satellite accumulation containers of paint waste solids (i.e. contaminated cloths, rags, wipes, and papers) located in Hanger No. 11.

46. Therefore, Respondent failed to meet the exemption requirements of 40 C.F.R. § 262.34, and stored hazardous waste in Hanger No. 11 without a permit or interim status in violation of 40 C.F.R. §§ 270.1 and 270.10, RCRA Section 3005(a), and 30 TEX. ADMIN. CODE §§ 335.69 and 335.112.

47. Respondent operated a hazardous waste storage facility without meeting the permit requirements of 40 C.F.R. §§ 270.1 and 270.10, RCRA Section 3005(a), and 30 TEX. ADMIN. CODE § 335.69 [40 C.F.R. § 262.34] by: failing to keep hazardous waste containers closed and secure during storage; failing to mark or label containers clearly with the words "Hazardous Waste" or other words identifying the contents of each container; failing to store paint waste solids inside of proper hazardous waste containers which were clearly marked and dated for inspection; failing to timely dispose of hazardous waste accumulated on-site for more than the permitted ninety (90) days; failing to place the date upon which each period of accumulation began on each hazardous waste container; failing to conduct inspections and maintain associated inspection reports for the central waste consolidation area; and failing to update the Facility's emergency response contingency plan and provide copies to local authorities.

48. THEREFORE, EPA finds that Respondent violated 30 TEX. ADMIN. CODE §§ 335.2 and 335.69, 40 C.F.R. §§ 262.34, 262.11, 265.173, 265.174, 270.1 and 270.10, RCRA Section 3005(a), and 42 U.S.C. § 6925(a), by storing hazardous waste without a permit.

IV.

RCRA COMPLIANCE ORDER

49. During 2002, Respondent officially ceased operations and completed closure activities at the Facility. Respondent's parent company, Fairchild Dornier Corporation, filed for bankruptcy protection and relief under Chapter 11, U.S. Code, on April 24, 2002. Closure of the Facility

required Respondent to discontinue RCRA regulated activities such as: aircraft manufacturing, metal finishing, painting, construction, and assembly operations at the Facility. In consideration of the facts and circumstances stated above and pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the EPA Region 6 - RCRA Program has concluded that Respondent has taken corrective actions and remedial measures necessary to demonstrate compliance with RCRA and the regulations promulgated thereunder.

A. Facility records indicate that shipments of hazardous waste to off-site disposal facilities continued through November 2002. On June 1, 2004, Respondent submitted to EPA multiple hazardous waste disposal manifests, hazardous waste shipping records, and certificates of disposal (Attachment A). Said manifests, records, and certificates submitted by Respondent sufficiently document hazardous waste disposal activities (i.e. quantities, substances, dates, etc. of hazardous waste generated at the Facility and subsequently disposed of off-site) conducted by Respondent during the facility closure period (2002). The documents submitted by Respondent demonstrate that all hazardous waste generated and accumulated on-site before closure was properly managed, transported, and disposed, pursuant to 30 TEX. ADMIN. CODE § 335.69 [40 C.F.R. parts 262, 264, 265, 268, and 270].

V.

PENALTY ORDER

50. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of Respondent's permanent cessation of manufacturing operations, closure of the Facility, pending bankruptcy status, good faith efforts to comply with the applicable regulations,

and the October 1990 RCRA Civil Penalty Policy, EPA deems Respondent **unable to pay** any civil penalty assessed pursuant to this matter.

51. EPA has reviewed the documentation provided by the Respondent and has determined that the Respondent is not able to pay a penalty. Therefore, EPA assesses a penalty of zero (0) dollars.

VI.

PARTIES BOUND

52. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

VII.

RETENTION OF ENFORCEMENT RIGHTS

53. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

54. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from Respondent's Facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or

regulations.

VIII.


EFFECTIVE DATE

This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT

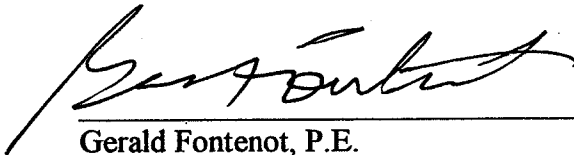
Date: 6-18-04



Representative of Fairchild Dornier Corp.
Tracie + Bobby for

FOR THE COMPLAINANT:

Date: 7/2/2004




Gerald Fontenot, P.E.
Acting Director
Compliance Assurance and
Enforcement Division
U.S. Environmental Protection Agency
Region 6

This Consent Agreement and Final Order is hereby adopted and issued pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.

It is so ORDERED. This Order shall become effective immediately upon filing with the Regional Hearing Clerk.

Date: July 8, 2004



Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of July, 2004, the original of the foregoing Consent Agreement and Final Order concerning Fairchild Dornier Corporation, Docket No. RCRA-06-2003-0901, was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method identified below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED _____

Dylan Trache, Esq.
Wiley, Rein & Fielding, L.L.P.
7925 Jones Branch Drive, Suite 6200
McLean, VA 22102

CERTIFIED MAIL - RETURN RECEIPT REQUESTED _____

Robert M. Gants, Esq.
Redmon, Peyton & Braswell, L.L.P.
510 King Street, Suite 301
Alexandria, VA 22314

CERTIFIED MAIL - RETURN RECEIPT REQUESTED _____

James Walsh III, Registered Agent
Fairchild Dornier Corporation
10823 N.E. Entrance Road
San Antonio, TX 78216-6001

